

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Northern Metals, LLC,

Court File No. 62-CV-15-3827

Petitioner,

Case Type: Civil Other/Misc.

The Honorable John H. Guthmann

v.

Laura Bishop, in her official capacity as the Commissioner of the Minnesota Pollution Control Agency, and the Minnesota Pollution Control Agency,

Respondents,

SECOND CONSENT DECREE

and

State of Minnesota, acting by and through its Minnesota Pollution Control Agency,

Counterclaim-Intervenor,

and

City of Minneapolis and Minnesota Center for Environmental Advocacy,

Intervenors.

Based on the information available to the parties, without trial or adjudication of any issues of fact or law, and upon consent of the parties hereto, it is ordered as follows:

I.
JURISDICTION

The Court has jurisdiction over the subject matter of this action pursuant to Minnesota statutes chapters 115 and 116 (2018), and has jurisdiction over the parties herein.

II. PARTIES

This Consent Decree applies to and is binding upon the following parties:

- A. Minnesota Pollution Control Agency and Laura Bishop, in her official capacity as the Commissioner of the Minnesota Pollution Control Agency (“MPCA”);
- B. Northern Metals, LLC (“Northern Metals”), a Delaware limited liability company that currently operates a metal recovery facility at 2800 Pacific Street North, Minneapolis, Minnesota (the “Minneapolis Facility”).

III. SCOPE OF CONSENT DECREE

This consent decree resolves the MPCA’s motion dated August 29, 2019 for enforcement of a prior consent decree in this matter entered on March 15, 2017 (the “First Consent Decree”). This consent decree constitutes full settlement and resolution of any and all other claims that MPCA could have taken on the facts admitted in Section IV that could have been brought by MPCA under the following statutory and regulatory programs:

- A. Minnesota Pollution Control Agency Procedural Rule 7000.0300;
- B. Air Quality Permitting Program, Minn. R. ch. 7007;
- C. Ambient Air Quality Standards, Minn. R. ch. 7009;
- D. Monitoring and Testing Requirements, Minn. R. ch. 7017;
- E. Emission Inventory Requirements, Minn. R. ch. 7019;
- F. State Waters Discharge Restrictions, Minn. R. ch. 7053;
- G. NPDES requirements, Minn. R. 7001.1000-1040;
- H. Minnesota Stormwater Regulatory Program, Minn. R. ch. 7090; and
- I. Minn. Stat. § 115.075, Information and Monitoring.

This consent decree supplements rather than replaces the First Consent Decree. The

terms and conditions of the First Consent Decree remain in place, except as expressly modified by this consent decree. No provision of this consent decree is subject to the dispute resolution (Section VIII), extensions/force majeure (Section IX), or termination (Section XVIII) of the First Consent Decree.

Nothing in this Agreement creates rights, substantive or procedural, that can be asserted or enforced with respect to any claim or legal action brought by a person who is not a party to this Agreement.

Northern Metals acknowledges that the MPCA or a court may seek to consider this consent decree, including the alleged violations, in a future enforcement proceeding.

IV. ADMISSIONS

As part of this consent decree, Northern Metals admits as follows:

(A) Northern Metals operates a metal shredding operation at the Minneapolis Facility pursuant to an air emissions permit issued number 05300480-003 (“the Minneapolis Facility Permit”). Under the terms of the Minneapolis Facility Permit, Northern Metals is required to take pressure drop readings at least once every 24 hours from fabric filters which are a component of its pollution control equipment. The filters are located on the north and south sides of the building that houses Northern Metals’ shredder. The Minneapolis Facility Permit provides that pressure drop readings are measured in inches of water column, and that an upper range reading may not exceed 8.0 inches. If a reading exceeds 8.0 inches, Northern Metals is required to take corrective actions to return the reading to an acceptable level.

(B) Both the Minneapolis Facility Permit and the First Consent Decree require that Northern Metals maintain accurate records of all required readings. (First Permit A-16; Consent Decree § V(B)(ii)(5)). To satisfy its obligations to measure pressure drop on its pollution control

equipment and to maintain records of those inspections, Northern Metals measures the pressure drop readings on a twice daily basis, and maintains a log book of the readings.

(C) Northern Metals admits to the following violations of Minn. R. 7007.0800, subpart 5 (2017) (“Recordkeeping”), the terms of the Minneapolis Facility Permit, and the First Consent Decree:

- i. Northern Metals admits that the log book it maintained for pressure drop readings did not accurately record the actual pressure drop readings taken from its pollution control equipment;
- ii. Northern Metals admits that its log book was altered on the following dates in the following manner:

Date	Discrepancy
05/18/19	1:00 p.m. reading for the north filter was altered with white out
05/30/19	11:00 a.m. reading for the south filter was altered from 8.4 to a 7.4
06/11/19	10:00 a.m. reading for the south filter was altered from 8.4 to a 6.4
06/13/19	3:00 p.m. reading for the south filter was altered from 8.4 to a 7.4
06/14/19	12:00 p.m. reading for the south filter was altered from 9.0 to a 7.0
06/26/19	10:00 a.m. reading for the south filter was altered from 9.0 to an 8.0
06/27/19	3:00 p.m. reading for the south filter was altered from 9.0 to an 8.0
07/16/19	3:00 p.m. reading for the south filter was altered from 9.0 to an 8.0

iii. Northern Metals admits that the pressure drop readings recorded in its log book on July 30, August 16, and August 17, 2019 did not accurately record the actual pressure drop readings taken from its pollution control equipment on those dates; and

iv. Northern Metals admits that the alterations of its log book and failure to maintain accurate records of its pressure drop readings constitute violations of the Minneapolis Facility Permit, the First Consent Order, and Minn. R. 7007.0800, subpart 5 (2017) (“Recordkeeping”).

As part of MPCA’s motion to enforce the First Consent Order, MPCA did not address whether there were exceedances of Northern Metals’ permitted air emissions. This consent decree is not an admission or concession by Northern Metals of any exceedances of its permitted air emissions, and is likewise not an admission or concession by MPCA that there were not exceedances of Northern Metals’ permitted air emissions.

**V.
INJUNCTIVE RELIEF**

Northern Metals is hereby ordered to permanently cease metal shredding operations at the Minneapolis Facility no later than September 23, 2019 at 6:00 p.m. The closure moots the issue of Northern Metals’ request for an extension of time to continue shredding operations at the Minneapolis Facility, and the parties’ obligation to continue with the dispute resolution procedures of the First Consent Decree on this issue.

**VI.
BECKER PERMIT**

On the basis of the admissions ratified in this consent decree, Northern Metals agrees that MPCA has cause to reopen the air permit number 14100076-101 for Northern Metals’ Becker facility for the exclusive purpose of adding, amending, or altering the permit’s terms relating to

the manner in which Northern Metals monitors its emissions or pollution control equipment, and captures, records and reports the operational parameter readings of its pollution control equipment. Northern Metals retains any procedural and substantive rights, including raising other modifications as may be appropriate in an amendment, and as otherwise normally afforded to holder of permits to contest changes to an air permit, but Northern Metals may not contest the authority of MPCA to reopen the permit for the purposes set forth in this section.

**VII.
CIVIL PENALTY**

Northern Metals shall pay \$200,000 to the MPCA as a civil penalty on or before October 1, 2019. This penalty is above and beyond any civil penalty specified in the First Consent Decree.

**VIII
DOCUMENT PRESERVATION**

Northern Metals shall preserve its log books and all other documents in existence on the effective date of this consent decree, including emails and electronic correspondence, that are in its possession, custody, or control and that relate to the accuracy of its pollution control equipment readings for a period of three years after the Effective Date of the Consent Decree. This provision may be satisfied by preserving those documents responsive to MPCA's document request of September 11, 2019.

**IIX.
ENFORCEMENT
AND RESERVATION OF REMEDIES**

A. The parties to this Consent Decree may request relief from this Court if issues arise concerning the interpretation of this Consent Decree

B. This Court specifically retains continuing jurisdiction over both the subject matter hereof and the parties hereto for the purposes of interpreting, enforcing or modifying the terms of

this Consent Decree, or for granting any other relief not inconsistent with the terms of this Consent Decree, until this Consent Decree is terminated. Northern Metals or the MPCA may apply to this Court for any orders or other relief necessary to construe or effectuate this Consent Decree or seek informal conferences for direction as may be appropriate.

C. If Northern Metals does not comply with the requirements of this Consent Decree, the Court may enforce this Consent Decree by any one or any combination of the remedies available under Minn. Stat. § 115.071, including civil penalties in an amount to be established by the Court, based on the gravity of the violations, the history of this matter, and the economic benefit, or injunctive relief, or other relief available through the contempt powers granted to the Court.

D. MPCA specifically reserves the State's right, pursuant to Minn. Stat. § 115.072 (2018), to seek recovery of its litigation costs and expenses arising from any willful violations of this Consent Decree that require the MPCA to file a motion with this Court for enforcement of this Consent Decree.

E. MPCA specifically reserves the State's right to take actions to address violations arising out of statutes and rules not listed as within the scope of this Consent Decree and, unless otherwise provided herein, any violations arising after the Effective Date.

IX. NOTIFICATION

All notices under this Consent Decree shall be in writing. Unless otherwise specified, notices, progress reports and any other submittals made by Northern Metals pursuant to this Consent Decree shall be sent by mail, email, or hand delivered to the following individuals until notified by a Party that the person identified or address of a party has changed:

Brent Rohne
Inspector, Air Compliance & Enforcement Unit
Minnesota Pollution Control Agency
520 Lafayette Road
Saint Paul, MN 55155
(651) 757-2674
Brent.rohne@state.mn.us

Notices and other documents sent to Northern Metals shall be addressed as follows unless Northern Metals specify otherwise:

Northern Metals Contact
Scott Helberg
Chief Operating Officer
Northern Metal Recycling
2800 Pacific St N, Minneapolis, MN 55411
(612) 529-9221
scott.helberg@emrgroup.com

X.

SEVERABILITY.

The provisions of this Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Consent Decree shall remain in full force and effect.

XI.
HOLD HARMLESS

Northern Metals agrees to indemnify and save and hold the MPCA, its agents and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Northern Metals, its officers, employees, agents or contractors in carrying out the activities pursuant to this Consent Decree; provided, however that Northern Metals shall not indemnify the MPCA nor save or hold its employees and agents harmless from any claims or causes of action arising out of the acts or omissions of the MPCA, or its employees and agents.

XII.
AMENDMENT OF DECREE, SUCCESSORS

This Consent Decree may be amended by written agreement of the parties and amendments shall be entered with the Court. This Consent Decree shall be binding upon Northern Metals and its successors and assigns and upon the MPCA, its successors and assigns, and the City of Minneapolis, its successors and assigns. If Northern Metals sells or otherwise conveys or assigns any right, title or interest in the Minneapolis Facility, the conveyance shall not release Northern Metals from any obligation imposed by this Agreement, unless the party to whom the right, title or interest has been transferred or assigned agrees in writing to fulfill the obligations of this Agreement and the MPCA approves the transfer or assignment.

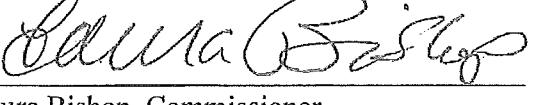
XIII.
EFFECTIVE DATE

This consent decree is effective upon the date it is entered by the Court. Northern Metals agrees to continue to initiate and implement all activities necessary to comply with the provisions of this consent decree pending entry by the Court.

XIV.
ENTIRE AGREEMENT

This Consent Decree constitutes the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this consent decree.

THE PARTIES ENTER INTO AND APPROVE THIS CONSENT DECREE AND SUBMIT IT TO THE COURT SO THAT IT MAY BE APPROVED AND ENTERED, AND BY THEIR SIGNATURES, THE UNDERSIGNED REPRESENT THAT THEY HAVE AUTHORITY TO BIND THE PARTIES THEY REPRESENT.

NORTHERN METALS, LLC  Scott Helberg, Chief Operating Officer	MPCA  Laura Bishop, Commissioner
Dated: <u>9/23/19</u>	Dated: <u>9/20/2019</u>

IT IS SO DECREED AND ORDERED. JUDGMENT SHALL BE ENTERED IN ACCORDANCE WITH THE FOREGOING CONSENT DECREE.

Date

Judge of District Court